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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CASEY R. PERRY,

11 Plaintiff,

12 v.

13 JOHN SCOTT,

14 Defendant.

Case No. C08-5729 FDB/KLS

ORDER TO SHOW CAUSE

15 This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. §
16 636(b)(1), Local Rules MJR 3 and 4, and Federal Rule of Civil Procedure 72. The case is before the
17 Court upon review of Plaintiff's complaint. After reviewing the Complaint and balance of the record, the
18 Court finds and orders as follows:

19 A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745
20 F.2d 1221, 1228 (9th Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a
21 complete defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before
22 service of process under 28 U.S.C. § 1915(d). *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (*Icting*
23 *Franklin v. Murphy*, 745 F.2d 1221, 1227 (9th Cir. 1984)).

24 Although complaints are to be liberally construed in a plaintiff's favor, conclusory allegations of
25 the law, unsupported conclusions, and unwarranted inferences need not be accepted as true. *Id.* While the
26 court can liberally construe plaintiff's complaint, it cannot supply an essential fact an inmate has failed to
27 plead. *Pena*, 976 F.2d at 471 (*quoting Ivey v. Board of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th
28 Cir. 1982)).

1 To state a claim under 42 U.S.C. § 1983, a complaint must allege that the conduct complained of
2 was committed by a person acting under color of state law and that the conduct deprived a person of a
3 right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v. Taylor*,
4 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986). Section
5 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present.
6 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

7 When prison officials initially determine whether a prisoner is to be segregated for administrative
8 reasons due process only requires that prison officials must hold an informal nonadversary hearing within
9 a reasonable time after the prisoner is segregated. *Toussaint v. McCarthy*, 801 F.2d 1080, 1100 (9th Cir.
10 1986). *See e.g.*, *Hewitt v. Helms*, 459 U.S. at 476-78 nn. 8 & 9, 103 S.Ct. at 874 nn. 8 & 9 (72 hours of
11 segregation constitutes a “reasonsonable time.”). The prison officials must inform the prisoner of the
12 charges against the prisoner or their reasons for considering segregation. *Toussaint*, 801 F.2d at 1100.
13 Prison officials must allow the prisoner to present his views. *Id.*

14 In addition, verbal harassment or abuse alone is not sufficient to state a constitutional deprivation
15 under 42 U.S.C. § 1983. *Oltarzewski v. Ruggiero*, 830 F.2d 136, 139 (9th Cir. 1987) (citation and
16 quotation omitted); *see also Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997); *Keenan v. Hall*, 83
17 F.3d 1083, 1092 (9th Cir. 1996), *amended by* 135 F.3d 1318 (9th Cir. 1998). “A mere threat may not state
18 a cause of action” under the Eighth Amendment, even if it is a threat against exercising the right of access
19 to the courts. *Gaut v. Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (per curiam).

20 In this case, Mr. Perry has alleged that during his administrative segregation hearing on September
21 29, 2008, John Scott told Mr. Perry to shut up and threatened to throw him out of the room if he did not
22 do so. Dkt. # 1-2, p. 3. Mr. Perry asks the Court reprimand the Defendant for his unprofessional actions,
23 that ad-seg hearings be recorded and that a further investigation be conducted into his grievance. *Id.*, p. 4.

24 Mr. Perry has failed to state a constitutional deprivation under 42 U.S.C. § 1983. In addition, the
25 remedies he seeks are more properly the province of the internal administrative processes available within
26 his correction institution.

27 Due to the deficiencies described above, the court will not serve the complaint. Plaintiff shall file
28 an amended complaint curing, if possible, the above noted deficiencies, or show cause explaining why

1 this matter should not be dismissed **no later than January 9, 2009**. If Plaintiff files an amended
2 complaint under § 1983, the amended complaint shall consist of a **short and plain statement** showing
3 that he is entitled to relief. Plaintiff shall allege with specificity the following:

- 4 (1) the names of the persons who caused or personally participated in causing the
5 alleged deprivation of his constitutional rights;
- 6 (2) The dates on which the conduct of each Defendant allegedly took place; and
- 7 (3) the specific conduct or action Plaintiff alleges is unconstitutional.

8 Plaintiff shall set forth his factual allegations in separately numbered paragraphs and shall attach
9 only those exhibits relevant to the factual allegations contained within the amended complaint.

10 Plaintiff is further advised that this amended pleading will operate as a complete substitute for
11 (rather than a mere supplement to) the present complaint. Plaintiff shall present his complaint on the form
12 provided by the Court. The amended complaint must be legibly rewritten or retyped in its entirety, it
13 should be an original and not a copy, it may not incorporate any part of the original complaint by
14 reference, and **it must be clearly labeled the “First Amended Complaint” and Cause Number C08-**
15 **5719RBL/KLS must be written in the caption.** Additionally, Plaintiff must submit a copy of the “First
16 Amended Complaint” for service on each named Defendant.

17 **Plaintiff is cautioned that if he fails to show cause or amend his complaint by January 9,**
18 **2009, the Court will recommend dismissal of this action as frivolous pursuant to 28 U.S.C. § 1915**
19 **and such dismissal will count as a “strike” under 28 U.S.C. § 1915(g).**

20 The Clerk is directed to send Plaintiff the appropriate forms that he may file an amended
21 complaint. The Clerk is further directed to send a copy of this Order and a copy of the General Order to
22 Plaintiff.

23 Dated this 12th day of December, 2008.

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26 Karen L. Strombom
27 United States Magistrate Judge
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